After hearing the further argument I have come to the conclusion, though not without all doubt, that as regards this Settlement the District Court Rules can be said to have been repealed and re-enacted by the Subordinate Courts Rules, and if this be so, then I think section 12 of the Interpretation and General Clauses Ordinance must be applied.

I would, however, draw the attention of the rule making authority (which, if the Rent Assessment Board is a Subordinate Court, is now the Rules Committee) to the fact that a somewhat lengthy body of rules designed essentially for the disposal of suits in civil Courts has been applied to proceedings before a Board, whose only function (at least in regard to ejectment cases) is to give permission for proceedings in Court to be brought. I think the point raised in the present proceedings before me illustrates the unsuitability of the Subordinate Courts Rules to proceedings before a Rent Board and indicates the advisability of more suitable rules for Rent Assessment Board cases being drawn up.

My answer to the question raised by the Board in this case is that the defence of *res judicata* does not apply in this case and does not constitute a bar to the further proceedings sought to be brought before the Board by the applicant.

Order accordingly.

Solicitor for the applicant: *Lim Kheng Kooi.*
Solicitor for the respondent: *Ong Huck Lim.*

HARDIAL SINGH v. HARBANS SINGH.

[C. A. (Mathew, C.J., Abbott & Thomson, JJ.) April, 15, 1954]

[K. L. — Civil Appeal No. 43 of 1953]

Land Code (Cap. 138), ss. 129, 138 & 139 — Charge — Notice of demand — Form of.

Where money secured by charge is payable by demand the proper Form of Charge is that given in Schedule XXIV(c) and not XXIV(a). If the Form in Schedule XXIV(a) is used then when the default is made in payment the Notice of Demand must comply with the requirement of section 138 of the Land Code.

Case referred to:—

(1) *R. M. S. T. Somasundram Chetty v. Ng Sin Yan* (1923), 3 F.M.S.L.R. 205.

CIVIL APPEAL.

B. J. P. Joaquim and *M. N. Cumarasami* for the appellant.

F. G. Charlesworth and *Marsh* for the respondent.

The facts and arguments appear sufficiently from the judgment of Mathew, C.J., with which Abbott and Thomson, JJ. concurred.

Cur. Adv. Vult.

Mathew, C.J. : — On the 6th of November, 1951, the respondent, in consideration of the sum of $170,000 lent to him by the appellant, executed a memorandum of charge in favour of the appellant over the respondent's undivided one-third share in a piece of land in Kuala Lumpur. The fourth clause to that memorandum of charge reads :—

"Fourthly that if at any time interest shall be in arrear for more than three (3) months then the whole sum of dollars one hundred and seventy thousand ($170,000) or so much thereof as shall for the time being remain unpaid with interest thereon shall immediately become due and payable and the Chargee shall thereupon be entitled to all".

The monthly interest on the loan was $850. On 9th June, 1952, a cheque drawn by the respondent in respect of the March 1952 instalment was dishonoured, and on the 21st June the appellant served notice on the respondent in the following terms :—

Singapore,
21st June 1952.

Mr. Harbans Singh son of Jagat Singh,
c/o Messrs. Jagat Singh & Sons,
59 Batu Road, Kuala Lumpur.

NOTICE UNDER SECTION 138 OF THE LAND CODE.

You have made default in the payment of interest due under the charge executed by you in my favour on the 6th day of November 1951, on your one-third share of land held under Selangor Certificate of Title No. 4744 Lot No. 291 of section 46 in the town of Kuala Lumpur.

This is to give you notice that you shall pay to me the sum of $170,000 being the principal sum due under the said charge and all interest due thereon, within a period of thirty-five (35) days from the date of receipt hereof and that I will resort to all remedies competent unless this notice is complied with.

Sd. HARDIAL SINGH,
Chargee.

On the 4th October, 1952, the appellant took out an Originating Summons requiring the respondent to show cause why his interest on the property in question should not be sold by public auction. On 29th October 1952 the application made by the Originating Summons was dismissed for reasons which do not require consideration here, as the main basis of the appeal rests on other grounds which were not argued before the learned trial judge.

No evidence was called, and the many issues which were required to be decided were by agreement between Counsel put on one side. The learned trial judge was only required to decide whether he would make the order asked for, on the assumption that all the facts in the appellant's affidavit of 27th September, 1952, were correct. Apart from the issues of fact which the

learned judge was not called upon to decide there were a number of points of law to which his attention was not directed.

Mr. Joaquim for the appellant submitted that in default of the respondent showing either that the money was not due or that the requirements of the law had not been complied with, the order asked for should have been made.

Mr. Charlesworth for the respondent submitted that the notice under section 138 Land Code was premature and therefore the notice was bad. There was no default in respect of the March instalment until 7th June, 1952, and therefore the thirty days' continued default in payment of the interest required under section 138 of the Land Code had not occurred when the notice (*supra*) was given to the respondent. Mr. Joaquim contends that the notice which was headed "Notice under section 138 Land Code" should have read "section 139" and that the notice under section 139 was good. He further submitted that the words in clause 4 of the Memorandum of Charge: "immediately due and payable" are the same as "payable on demand."

If Mr. Joaquim's submission is correct, it is difficult to understand the necessity for both sections 138 and 139. He has conceded most fairly that if the notice does not come under section 139 that then he must fail in this appeal.

We have been referred to the case of *R. M. S. T. Somasundram Chetty v. Ng Sin Yan*[1], which was decided in 1923 when the Registration of Titles Enactment, 1911, was in force. In the Court of Appeal, the majority of the Court held that a charge drawn as payable on demand was a substantial variation from the form in the Schedule, and should have been rejected by the Registrar under his powers in section 26 as unfit for registration. Section 45 was substantially the same as section 138 Cap. 138, and only provided for two forms of charge, neither of them being applicable to a loan payable on demand.

In 1926 the present Land Code (Cap. 138) was enacted, and we find section 129 (corresponding to section 43 of the repealed Enactment) with the important difference that a form of charge XXIV(c) was added which related to a loan repayable on demand. We find also that section 139 was added, of which there is no counterpart in the 1911 Enactment. The clear intention of the legislature was to make valid a form of charge the validity of which had been doubted in *Somasundram's case*[1] (*supra*). Section 139 was a necessary corollary to the provision of Schedule XXIV(c) and was not intended to derogate from the protection given to chargors by section 138 in relation to forms of charge other than the form under Schedule XXIV(c).

I find myself unable to agree with Mr. Joaquim's submission that the form of charge under Schedule XXIV(a) can be regarded as a charge to pay on demand. Schedule XXIV(c) provides the form to be used for payment on demand, and it was not used. I am satisfied that the notice (*supra*) in relation to the payment of the principal was premature and therefore ineffective under the Land Code. I would dismiss the appeal with costs and order the deposit to be paid to respondent's solicitors.

Appeal dismissed.

In re TAN AH CHUAN & ANOR.

[A. Cr. J. (Spenser Wilkinson, J.) April 28, 1954]

[Penang — Criminal Revision No. 12 of 1954]

Penal Code, s. 193 — Giving false evidence — Whether an accused person can be charged and convicted in the alternative in respect of false information given to a Customs Officer under s. 97 of the Customs Ordinance, 1952, as one alternative and false evidence in the criminal trial as the other alternative — Criminal Procedure Code, s. 176, Illustration (b) — Jurisdiction of Court — Persons charged with giving false evidence should be tried separately unless there is evidence of conspiracy — Certified copy of Notes of Evidence — Evidence Ordinance s. 76.

In this case the accused were charged on the following charge: "That you . . . . on the 25th day of August, 1953 at about 4.00 p.m. at the Customs Office, Penang, in the course of an inquiry into an alleged offence stated to P. Talbot, Esq., a Customs Officer that you drove lorry No. P. 3042 direct to Changloon from Butterworth without stopping on 23rd August, 1953 . . . . and at Alor Star on the 24th October, 1953 in the course of the trial Regina v. Ch'ng Saik Kee No. 1 of 1953, stated in evidence that you stopped to unload goods at Alor Star during the course of the aforesaid journey . . . . one of which statements you knew or believed to be false or did not believe to be true and that you thereby committed an offence punishable under Section 193 of the Penal Code."

The two accused were tried jointly in the Magistrate's Court. After the evidence had been taken the question was reviewed as to whether the Magistrate's Court had jurisdiction to try the charge. The learned Magistrate after considering the matter transferred the case to a President of the Sessions Court. The case was then removed to the High Court under the powers given in section 37 of the Courts Ordinance. The most important point raised for decision in the case was whether it was permissible to charge and convict an accused person in the alternative in respect of false information given to a Customs Officer under section 197 of the Customs Ordinance, 1952, as one alternative and false evidence in a criminal trial in a Sessions Court as the other alternative.

Held: (1) information given to a Customs Officer under section 97 of the Customs Ordinance when such information is false to the knowledge of the person giving